IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1083 of 2001

in
SPECIAL CIVIL APPLICATION No 7710 of 2001

WITH
CIVIL APPLICATION No.10878 of 2001

in
LETTERS PATENT APPEAL No.1083 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MINOR JAYESHKUMAR DHANABHAI PARMAR, THROUGH HIS GUARDIAN

Versus

DEAN, B.J. MEDICAL COLLEGE

Appearance:

Shri JITENDRA MALKAN for Appellant

Shri N.D. Gohil, ASSTT GOVERNMENT PLEADER for
the respondent

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: /11/2001

C.A.V. JUDGEMENT (Per : MR.JUSTICE RAVI R.TRIPATHI)

The present Letters Patent Appeal is filed by minor, Jayeshkumar Dhanabhai Parmar, through his guardian and next friend (father) against the order passed by the learned Single Judge dated 26.9.2001 dismissing the petition.

2. The original petitioner/ appellant herein had approached this Court for a writ of mandamus, quashing and setting aside the action of the respondent in cancelling the interview letter dated 23.8.2001 for admission to First MBBS/ First BDS/ First B. Physio courses for academic year 2001-- 2002 on reserved seat of locomotor disabled candidates. The facts of the case are that the petitioner is a handicapped persons suffering from locomotor disability. The petitioner is also a member of scheduled caste-Hindu-- Chamar, born on 21.5.1984. The petitioner is having permanent locomotor disability to the extent of 42% (RESIDUAL POLIO MYLITIS LEFT LOWER LIMB). The petitioner appeared in the higher secondary certificate examination (10 + 2 pattern) held by the Gujarat Secondary Education Board, Gandhinagar in the month of April/ May 2001 in Science stream. The petitioner secured 470 marks out of 650 for calculation of percentage and grade and 357 marks out of 450 in theory, science and maths. The petitioner applied for admission to First MBBS to the Dean, B.J. Medical College, Central Admission Cell. The name of the petitioner appeared at serial no.1 in the merit list separately prepared for reserved seats for locomotor disabled persons. The petitioner was issued interview letter dated 23.8.2001 for admission. The interview was scheduled to be held on 11.9.2001. The petitioner was directed to report to the respondent on 28.8.2001 at

11.00 AM for physical check up regarding the petitioner's locomotor disability. The petitioner appeared for physical examination on the given date, i.e. 28.8.2001. He was examined by a committee of Orthopedic Surgeons of Civil Hospital, Ahmedabad. The petitioner was then informed by the respondent vide letter dated 30.8.2001 which was received by the petitioner on 7.9.2001, that the expert committee of Orthopedic Surgeons of Ahmedabad has found the petitioner not eligible for admission on reserved seat of locomotor disabled candidates. The petitioner approached this Court by filing the aforesaid Special Civil Application. Wherein the Court issued notice and in response thereto the respondents appeared and filed an affidavit in reply.

3. The main contention on behalf of the petitioner was that the petitioner is having higher merits than the other physically handicapped persons who are given admission on the reserved seats for physically handicapped persons. That the decision of the committee of experts does not record reasons for holding the petitioner unfit for admission to Medical College; that the petitioner has not been given an opportunity of hearing by the said committee and therefore, the said decision shall not be binding on and applicable to the petitioner. Learned advocate for the petitioner placed reliance on judgement of Division Bench of this Court (Coram : D.M. Dharmadhikari, C.J. & M.S. Shah, J.) in Special Civil Application No.7410 of 2000 in the matter between Palak Kailashchandra Jain, minor, through her natural guardian v. Union of India, decided on 27.11.2000. The submission made was that subrule (3) of rule 5 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 [hereinafter referred to as "the Rules"] enjoins upon the authority concerned to give the applicant an opportunity of hearing before it refuses disability certificate. It was contended on behalf of the petitioner that the petitioner is capable of withstanding rigours of pursuing the medical course as the petitioner has successfully passed Standard XII examination (Science stream) in which he was required to stand for hours for performing laboratory practical in various subjects. It was also submitted on behalf of the petitioner that the petitioner is capable of walking several Kilometers and also capable of standing for long time. According to the petitioner the decision of the Experts' Committee is arbitrary and is not binding to the petitioner.

4. The learned Single Judge taking into

consideration the contents of the affidavit in reply filed by the respondents wherein it was stated that all the physically handicapped persons were referred to the committee for examination as regard their disability for admission to Medical College. Having considered such cases the Committee consisting of 15 experts has opined that having regard to the nature of disability of the petitioner he is not suitable for admission to medical, dental or physiotherapy courses. Pursuant to the opinion of the Experts' Committee, the petitioner and such other persons have been denied admission and they have not been called for interview. The learned Judge was pleased to hold that there is no substance in the contentions raised by Shri Malkan, learned advocate appearing for the petitioner. The learned Judge was also pleased to hold that in case of Palak Kailashchandra Jain, minor (supra) this Court has accepted the necessity to subject such handicapped persons to a further physical test so as to ascertain their ability/ fitness/ suitability for admission to Medical College. The learned Judge also held that if the contentions raised by the learned advocate for the petitioner are accepted the decision of the Division Bench of this Court and the exercise undertaken by the Experts' Committee will be rendered superfluous. The learned Judge also held that reliance placed by the learned advocate for the petitioner on subrule (3) of rule 5 of the Rules is also irrelevant inasmuch as subrule (3) refers to 'refusal of granting disability certificate'. In the present case the petitioner has already been granted disability certificate by the concerned authority. The learned Judge also recorded that physical test given by the petitioner was only in respect of his disability to undergo rigours of the medical course and that the examiners were experts in the subject, who are able to assess the nature of disability and also alive to the rigours of pursuing medical course.

5. The learned Judge was pleased to hold that the decision of the experts' committee is not required to be supported by reasons nor is the concerned student required to be heard in this respect. The learned Judge was pleased to dismiss the petition after considering the opinion of the Experts' Committee regarding the suitability of the petitioner for admission to Medical College. The learned Judge also held that denial by the College for admission to the petitioner is justified and requires no interference.

6. Notice was issued in this Letters Patent Appeal on 8.10.2001, and the same was made returnable on

10.10.2001. On 10.10.2001 the learned Assistant Government Pleader appearing for respondents reiterated what was submitted in the affidavit in reply filed in the Special Civil Application. Learned Assistant Government Pleader drew the attention of the Court to Annexure III to the affidavit in reply. Said Annexure contains information in a tabular form entitled, "List of Locomotor Disabled Candidates, 2001-- -2002". Said Annexure III contains the particulars, viz., merit No., registration no., name, nature of disability, percentage of disability, fit for medical, fit for dental, fit for physio and signature.

The name of the petitioner appears at page 39 of the petition. In column entitled 'nature of disability', it is 'blank'. In column - percentage of disability. 42% is mentioned and thereafter it is mentioned against column-- fit for medical : No; fit for dental: No; fit for physio : 'Yes' is written and scored off and below that is written 'No'.

On perusal, the Court found that in many other cases where disability is more than 42%, such as 50%, 55% 'Yes' is written in all the three columns, i.e. fit for medical: fit for dental: fit for physio.

In case of one Patel Rajeshkumar R., at page 47, in column entitled 'nature of disability', it is mentioned, "cerebral pally spartic para parasis, in column % of disability and still in all the three columns for fitness, 'Yes' is mentioned.

In yet another case of Shah Rumitkumar, in column 'nature of disability', it is mentioned, "Bilat RPM L.L.", while column for % of disability shows 65% and yet fit for medical: Yes, fit for dental : 'Yes' is scored off and written 'No'. Fit for physio: Yes. The Court inquired from the learned Assistant Government Pleader as to whether the Committee has kept any record of the examination of these candidates, which can show that the Committee was alive to the "nature of disability" with the percentage of disability which lead to the conclusions recorded in the columns -- fit for medical, dental and physio. Learned Assistant Govt. Pleader sought time to take instructions. The matter was therefore, adjourned to 17.10.2001. On 17.10.2001, the matter was kept on 18th. On 18.10.2001, the learned Assistant Govt. Pleader submitted that except the material which is produced at Annexure III to the reply there is no other material. Therefore, nothing can be placed for perusal of the Court. Learned Assistant Govt.

Pleader submitted that about the working of the Committee there is no other record. It was also inquired as to why annexure III to the reply is signed by only three doctors though it is contended that the Committee was consisting of as many as 15 experts, whose names are at Annexure II, to the reply at page 36. Learned Assistant Govt. Pleader was not in a position to explain as to why the document at Annexure III is signed by only three doctors. He is also not in a position to explain as to why Annexure III, upto page 45, column, 'nature of disability' is blank. The column is not only important, it is in the nature of decisive factor. This is required to be noted because this Experts' Committee is entrusted with the task of determining the disability of the physically handicapped candidates (locomotor disabled) and its decision is to be treated final, as is mentioned in letter/ circular dated 7.8.2001 produced at Annexure 'I'. With a view to see that the decisions of the Committee are not branded as arbitrary, it is required that the proceedings of the Committee are so conducted that it inspires confidence. From the discussion above, it is clear that the Committee has not maintained any record except in the nature of one which is produced at Annexure III to the reply, a perusal of which shows that the most important column, i.e. 'nature of disability' is kept blank in most of the cases and upto page 45 not a single entry is made about the details of nature of disability. The learned Single Judge is right when it is recorded that, 'it is the decision of the Experts' Committee', but then said Experts' Committee has to discharge its function in such a manner that may inspire confidence. Not only that in case of necessity, the record should be so maintained that it is able to explain to the Court about its working so as to display what has weighed with the Committee while reaching to the conclusions recorded by it. In a case where a candidate is having 55% disability, is found fit for medical, dental and physio, whereas the petitioner who is having only 42% disability, is not found fit for any of the three disciplines. The Court is at a loss to appreciate the mere conclusions recorded by the Committee in absence of the details of the nature of disability which ought to have been mentioned in the column prescribed for the same. From perusal of the only available document of the Experts' Committee, it is not possible for this Court to hold that the working of the Committee was such which could inspire confidence in the decisions recorded by the Committee.

7. In the result this Letters is allowed. The judgement and order of the learned Single Judge is hereby

quashed and set aside. The respondent authorities are directed to consider the name of the appellant for admission on the reserved seat for locomotor disabled candidate for admission to First MBBS course for the academic year 2001-- 2002. In the circumstances there shall be no order as to costs.

8. The Civil Application stands disposed of.

(D.M. Dharmadhikari, C.J.)

(Ravi R. Tripathi, J.)

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